IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

NOTICE OF MOTION NO.2004 OF 2007
IN
SUIT NO. 671 OF 2002

Mr. Rashid Sattar Oomerbhoy .. Plaintiff
v/s.
Mr. Majid Ahmedbhoy Oomerbhoy and others .. Defendants

Ms. Sonal, Ms. Deepa Mani and Ms. Tasneem Saria i/by M/s. S.K. Srivastava & Co. for the plaintiff.
Mr. Mr. Gaurav Joshi with Mr. Jariwala i/by M/s. Thakore Jariwala & Associates for the defendant No.1.
Ms. Shamima Taly i/by Mr. S. Mahomed for the defendant Nos.3(a), 4 and 5.

CORAM : A.M. KHANWILKAR, J.
DATED : 10TH JULY, 2007

P.C.

The defendant Nos.1 and 8 are represented by counsel. Defendant No.7 is personally present in court. These defendants state that decree on admission be passed in terms of prayer clauses (a), (b) and (c).

2. Counsel for the plaintiff and defendant Nos. 3(a), 4 and 5 have no objection for passing the preliminary decree in terms of prayer clauses (a), (b) and (c) of the plaint for the time being. However, according to them, the shares of the respective shareholders in the concerned properties will have to be ear-marked and assigned. These parties, however, are not agreeable to divide the assets in two equal parts simplicitor, to be allotted to Group-A (comprising of family of Abdul Sattar Oomerbhoy being the plaintiff and defendant Nos.2 to 6) and Group-B (comprising of Majid A. Oomerbhoy family, i.e. Defendant Nos.1,7 and 8). According to them, the members of Group-A interse are not agreeable

for separation of the assets as one unit to be allocated to them. They want the assets to be further sub-divided in the proportion of their holding and for allocation of their respective share. It is submitted that if this arrangement is possible, they will have no objection for passing of the preliminary decree also in terms of prayer clause (c) of the plaint by clarifying that the distribution of the assets between the plaintiff, defendant No.2 and defendant No.3(a), defendant No.4, defendant No. 5 and defendant No.6 in the ratio of 9.95, 9.95, 1.06, 9.95, 9.95 and 9.14 respectively.

3. The defendant Nos.1,7 and 8 have no objection if the Commissioner is appointed to submit the report to indicate the modality of demarcating such shares so as to allot the same to respective shareholders. At the same time, defendant Nos.1,7 and 8 submit that in so far as their group is concerned which is defined as Group-B, the assets should be allocated to them as one unit viz. 50% of the total assets.

4. In the circumstances, by consent, preliminary decree is passed in terms of prayer clauses (a), (b) and (c) of the plaint which reads thus-

> (a) that this Hon'ble Court be pleased to Order and Decree that Ahmed Oomerbhoy Wakf Trust be dissolved and its affairs be wound up by and under the Directions of this Hon'ble Court.
>
> (b) that this Hon'ble Court be pleased to ascertain and declare the shares of each of the beneficiaries in the assets of the Ahmed Oomerbhoy Wakf Trust;
>
> (c) that this Hon'ble Court be pleased to partition the assets of the Ahmed Oomerbhoy Wakf Trust amongst the beneficiaries entitled thereto in accordance with their respective interests as per the Trust Deed dated 24th February 1938 and the share be allotted and awarded to such beneficiaries.

5. It is further ordered that the Commissioner for taking accounts is

appointed who shall submit report about the manner in which the assets of Ahmed Oomerbhoy Wakf Trust can be partitioned amongst the respective share holders falling in Group-A to the extent of 50% put together- albeit as per the respective holding of each member of that Group; as referred to earlier, and 50% to Group-B as one unit. That report be submitted as expeditiously as possible, preferably within three months from today. All procedure to be completed within three months from today. In the meantime, till the report of the Commissioner for taking accounts is submitted, interim arrangement already directed in terms of order dated 6th May, 2004 shall continue between the parties.

6. In view of the above arrangement, it is agreed between the parties, notice of motion No.2004 of 2007 be disposed of with liberty to apply.

7. It is made clear that the Commissioner for taking accounts will be free to take assistance of the Valuer or Architect or the Chartered Accountant as the case may be for the purpose of preparation of the report.

Ordered accordingly.

(A.M. KHANWILKAR, J.)